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A FEW PRACTICAL COMMENTS

ON THE

USURY LAW,

BY

JOHN WELSH,

President of the Philadelphia Board of Trade.

READ BEFORE THE BOARD AT A QUARTERLY MEET-
ING, JUNE 16, 1873.

PHILADELPHIA:

M'CALLA & STAVELY, PRINTERS, 237-9 DOCK STREET,
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Rooms of the PHILADELPHIA BOARD OF TRADE,

June 16th, 1873.

At a meeting of the Board of Trade held this evening, a paper on the Usury Law was read by the President, Mr. John Welsh. After the reading, the following resolution, offered by John Price Wetherill, Esq., was adopted, viz. :

That in view of the great interest now felt on this subject, the Secretary is hereby requested to have the paper just read, printed in pamphlet form, and distributed among the members of this Board.

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GENTLEMEN :

On the 19th (May) ult., the following resolution was adopted by the Philadelphia Board of Trade :

That in the opinion of this Board the following provision, as a part of the Amended Constitution of the State, would be generally acceptable to the various business interests it represents, viz.:

The lawful terms for the use of money shall be the rates agreed upon by the parties to the contract, and for loans where no agreement is made, the Legislature may from time to time affix a legal rate.

This resolution met with general approval. In regard to it, there is very little difference of opinion among the mechanics, manufacturers and merchants of the country. What measure of intelligence there is among them and how capable they are to reach a correct conclusion on this subject, others may determine. Their pursuits, and the effect of existing laws which act as a hindrance to their daily operations, make it reasonable that practically they are as well qualified as any other class to form reliable opinions on the laws which regulate the use of money. The extent of their interests, and the importance of those interests in their bearing on the welfare of the community, as well as the respect to which these important classes are entitled, make their opinions, when deliberately expressed, well worthy of consideration by their fellow-citizens, and particularly by that class of them who have been selected to form a new Constitution for this Commonwealth. To that body the resolution recited above

was addressed, that it might have its influence in the consideration of the following proposed article for the new Constitution.

“In the absence of special contracts the legal rate of interest and discount shall be seven per cent. per annum; but special contracts for higher or lower rates shall be lawful. All national and other banks of issue shall be restricted to the rate of seven per cent. per annum.”

In the Convention a debate of unusual interest followed the presentation of the article, and in opposition to it, Henry C. Carey, Esq., of this city, made a most elaborate and able address. On his address I propose to make a few practical comments.

Mr. Carey has few superiors as a profound thinker. He is a skillful controversialist, an experienced and polished writer, and enjoys a most extensive and well-deserved reputation. He is an economist whose teachings are in sympathy with the best interests of the country, and whose principles, shorn somewhat of the extremes to which he is apt to push them, are sustained by a large proportion of the members of the Philadelphia Board of Trade.

Mr. Carey was most earnest and emphatic in his denunciation of all attempts to repeal the usury law and to change the legal rate from 6 to 7 per cent., as provided for in the article under consideration. He expressed, as strongly as our language admits of it, the opinion, which from his affectionate and amiable disposition it seems impossible that he can hold, that the merchants, bankers, indeed all who desire its repeal, are “Shylocks, who would gladly take the pound of flesh nearest the heart.” In Shylock, how-

ever, the love of money was subordinate to the love of blood. It was revenge for the wrongs done to him by Antonio which caused Shylock to whet his knife and get his scales in readiness for the pound of flesh nearest Antonio's heart. It is probable Mr. Carey, in his application of Shakspeare's language to us offenders, did not desire that it should receive so literal an interpretation. I must confess to great disappointment at the manner in which Mr. Carey has treated the subject. It was reasonable to expect from him a philosophical review of it, an explanation of what usury is, a statement of the causes of the traditional prejudice which prevails against it, and a reason why the epithet usury is applied to the hire of money and not to the hire of anything else. Moses said, "thou shalt not give thy brother thy money on usury nor lend him thy victuals upon increase." Mr. Carey may not consider the latter an infraction of the law, although Moses did; but with Moses the prohibition was against *any increase* or *hire* if exacted from the *poor* Jew, but it did not apply if the loan was made to a Gentile. It is a matter of sincere regret that a gentleman whose studies so eminently fit him for it, did not avail himself of the opportunity to expose the principle on which "usury" is based. He may be satisfied to regard it as an infraction of a statute, but that will not answer the inquiry why it is an offense dependent on arbitrary statutes defined by geographical lines; nor explain the reason why the code of morals of New Jersey, Ohio, New York and Pennsylvania—States lying contiguous—are so radically different from each other, in that one bases it on 6 per cent., another on 7 per cent., and another on 8 per cent. There is no explanation

of it, as there is of the law which authorized slavery, where the color of the skin, the conformation of the skull, and the adaptation to peculiar kinds of labor and climate controlled the inductions of the physiologist, and ancient usages, handed down through the traditions of successive ages, combined with them to fasten upon a whole race so grievous a wrong.

Unfortunately for the free exercise of Mr. Carey's mind on this subject he looks on the effort for the abrogation of the usury law as a movement against the system of protection and the existence of paper money. In his study, away from any practical connection with the movements of money, dependent for all that he learns on statistical tables, reports &c., it is that his thoughts take shape, and therefore when he comes forth from it he may well be startled by the pungent truths embodied in the forcible words of Mr. Edward C. Knight and Col. John Price Wetherill, who followed him so ably in the debate—gentlemen whose experience has brought them to just conclusions and led them to know that the usury law is a mere sham, without other force than to increase the cost of money to the borrower, who may lawfully, by indirection, do that which the law forbids to be done directly. It was shown by these gentlemen beyond dispute that the Legislature, with the Usury Statute staring it in the face, had authorized almost every variety of Corporations including Banks, Railroad Companies, Mining and Manufacturing Companies to borrow and to loan money at any rate of interest. Is there any principle involved in the usury law if corporations are exempt from it and individuals are not? and the question becomes even less doubtful when, by the intervention of

a third party, individuals, also, are thrown by law beyond its pale? Notwithstanding the law against usury which is a prohibition to loan money at a rate beyond six per cent., in accordance with special law, corporations and individuals may loan or borrow at any rate they please.

Mr. Carey dwelt much on the evil consequences which will follow the repeal of the law, and pictured the distress caused by its repeal in England and elsewhere. If the law is virtually inoperative here, as it certainly is, then the consequences of the repeal are anticipated, and we are now amidst the irretrievable ruin he predicts, as unconscious of it ourselves as it is unobserved by others. It is not complained that the effects of the law are burdens too heavy to be borne, but rather that the law is not in accord with the intelligence of the day; that it entails on the borrower an unnecessary additional cost from the necessity of employing a third party; that its existence on the statute book is an offense to the moralist and statesman as a law false in principle, based on a traditional prejudice and shown to be so by other laws justifying that which it condemns; and that it denies to the laborer of Pennsylvania the intelligence to determine for himself whether he can afford to borrow capital on the same terms as his fellow laborers of New Jersey, New York and Ohio. Its repeal will not bring a millennium, much less need one fear the sad consequences which Mr. Carey has learned that England is suffering from because of it. In regard to this, stated by him as a fact, possibly he has been misled by some one who has practised on his credulity, or from his standpoint—his study—he sees it through books colored by the

ghastly hue of a system of political economy differing from his own. My outlook is through the busy avenues of commerce and industry, which bring before me a picture of England as she is now, possessed of more material wealth than ever before, with all the currents of the world's commerce tributary to her. I do not ascribe her condition to the repeal of the usury law, but her condition shows that its repeal has not checked her onward progress. I do not claim that the repeal of the usury law will be magical in the production of wealth, but that its continuance has no favorable effect on labor, is no protection against the so-called tyranny of capital, is abhorrent to common sense, which, because legal modes are provided for its avoidance, has long since determined it to be an absurdity.

Mr. Carey, as an economist, well understands the law of supply and demand, and its influence on values, and yet he asserts "that the reduction in the rate of interest indicates a growing power of labor over capital." He quotes from Turgot to support this position: "It is the abundance of capital that animates to effort, and the low rate of interest is at once the effect and the indication of that abundance." Instead of the latter being in support of Mr. Carey's position, Turgot says that when there is a superabundance of capital it is the stimulant of labor; in other words, when the supply of money is cheap those who can avail themselves of the opportunity, buy it. It is like any other article of commerce. The relation between capital and labor is intimate, and when it is in its normal condition it is reciprocal. An equipoise in the supply of both indicates the happiest condition of that relation. When labor is in profitable employment it is that the value of capital enhances

and in proportion to the profit resulting from labor is the increase of the hire of money. When the sinews of labor are in repose money has but little value. Therefore the reduction in the rate of interest is most apt to be caused by the paralysis of labor, and consequently it is not expressing its true condition to speak of the reduction of interest as indicating a growing power of labor over capital.

Mr. Carey speaks of money as a commodity, and says "that year after year we see some half a dozen men in the Bank of England *combining* for raising the price of the commodity they have to sell." This statement is suggestive of the question, if money be a commodity, which Mr. Carey calls it, and in this I agree with him, then why is it the only commodity which the law says shall be sold at a fixed price? It is true that in one respect money differs from other commodities, in that it has a purchasing power and a paying power. The paying power is fixed; that power is a creation of law; the purchasing power is changing, subject to the supply and the demand. Between it and other commodities, so far as the paying power is concerned, there is no resemblance, inasmuch as on no other commodity is that power conferred by existing laws, and therefore a commodity cannot be legally used in payment of debt; but in its purchasing power it is precisely similar to other commodities. Five dollars may to-day buy a barrel of flour or a barrel of flour may purchase five dollars, but to-morrow their relations may be changed, depending on the excess or diminution in the supply of either. So that exclusive of its paying power money is precisely like other commodities.

But the statement as made by Mr. Carey, conveys

a very incorrect view of the effect produced by the action of the Bank of England "in raising the price of the commodity it has to sell." To raise the rate of discount or the price of money is not for the purpose of increasing the profits, but for the very opposite purpose of checking the loans, and by reserving the receipts to strengthen the position of the Bank. Whenever there is an indication of a probable disturbance from excess of speculation at home or abroad, or any other cause likely to affect injuriously the material interests of England, the Bank rate is advanced to an extent which in the judgment of the men in the Bank Parlor may be necessary. Low interest is an indication of tranquillity in financial movements, high interest of a real or threatened disturbance. The variations in the rate are useful admonitions from a central commanding point for the government of the commerce of England, and they are largely influential in the commercial and monetary movements of the world. The daily reports from the Signal Office in Washington, as to the weather, known as "probabilities," which so largely contribute to the public convenience, are an apt illustration of the benefit conferred by the announcement of the changes in the rate of the Bank of England.

One of the curious features throughout Mr. Carey's argument against the repeal of the usury law, is that the element of hazard has no place in it, and yet its influence on the rates of interest or hire of money is of the greatest weight. Usury in Pennsylvania, it will be borne in mind, is any charge in excess of 6 per cent., irrespective of the character of the loan or of the security which accompanies it. Loans are made on personal and real security, and both equally

carry the responsibility of the borrower. Many personal loans are made on the name of the borrower, others on those of the borrower and endorser, to others, in addition to the names of borrowers, are added collaterals of United States loans, State loans, City loans, Corporation loans, Stocks, &c., whilst loans on real security carry the names of the borrower with a mortgage on real property. For all these classes of loans irrespective of the character and means of the borrowers or the estimation in which the securities are held, the law prescribes one rate of interest, and this Mr. Carey says is wise and just. Notwithstanding this if a trustee invest in either of four-fifths of the loans which are recognized as those of every day transactions, the law holds the trustee responsible for the hazard. Mr. Carey must know, as all practical men know, by experience, that the value of money must be measured by the hazard to which its use is exposed, and that the rate of its hire has been, is now, and must continue to be governed by that principle. The highest class of security will command a loan at the lowest rate of interest. This point being settled by usage, shows that no respect is paid to the usury law. But Mr. Carey has great anxiety lest the borrowers on mortgage should become a prey to the lenders of money. The rate of interest is dependent on two things, the supply of money and the sufficiency of the security. Of all kinds of security land is the most stable. It can neither be removed nor destroyed. Of all classes of people lenders of money are the most timid. But a small proportion of them in numbers will lend upon any other security than land valued at double the amount loaned. Mortgages are by law a legal invest-

ment. These two are reliable causes for a permanent demand for choice mortgages at rates below the current price of loans on less approved security. Very many mortgages are sold in Pennsylvania which yield to the lender of money from 7 to 12 per cent. per annum, but the rate for most mortgages is 6 per cent. and some are at 5 per cent. As a rule the usury law has no influence on negotiations for borrowing money on mortgages, although there is a small class of lenders who, from conscientious motives, avoid even the appearance of an infraction of the law, but this class without exception belongs to a much larger class who lend money at low rates because they look mainly to the sufficiency of the security. Agriculturalists who are borrowers, borrow on land, and agriculturalists who are lenders, lend upon land, and with all the fluctuations in the value of money from causes which are natural and based on sound principles, and must always be operative, mortgages on land will continue to be, as they now are, a favorite security.

Mr. Carey says "that combinations are being everywhere formed for raising the price of money, that the long loans of the past are being superseded by the call loans of the present; that the manufacturer and merchant are being more and more fleeced by Shylocks," &c.; and "this," he says, "is because the Treasury operations have tended in the direction of the money lender." He does not show the character of these Treasury operations, nor how these sad effects are brought about; nor does he seem to have studied what he believes to be their consequences so as to be able to expose their causes. The enlarged commercial facilities of the present day, the extension of the fields of

operations, the ease with which those fields are traversed, the varieties of property represented by the innumerable successful enterprises which the last twenty years have given rise to, whilst they have largely increased and widely diffused the wealth of the world, have also tended to the concentration of individual wealth both in Europe and the United States. At no previous period in modern times have there been so many examples of overgrown fortunes, and in most instances their individual possessors have gained their wealth by exceptional force of will or intellect and often of both. It is as unreasonable to expect moral perfection in this phase of genius as in a Napoleon. A victory in old Broad Street or on Wall Street is as alluring as on the fields of Jena and of Austerlitz, and we shall continue to have in every field where genius can have its play, in one shape or another, occurrences which will both startle and disturb. When volcanoes cease or the lion and the lamb lie down together such disturbances will be at an end.

That long loans have been superseded by short loans, as Mr. Carey represents that they now are, is a most extraordinary delusion. In the last ten years more long loans have been negotiated than in any known previous period. That period compasses the vast loans of the United States and of France. No State, city, county, or borough, in the United States has failed during it to get what it wanted, and their wants have not been limited. The railroad companies of this country alone owe twelve hundred millions, or thereabouts; one company is now creating a loan for forty millions. It is difficult to sum up the total amount of long loans which have been made in that time, and yet Mr. Carey says:

“the long loans of the past are being daily more and more superseded by the call loans of the present;” and again he says, “The whole tendency of the existing system is in the direction of annihilating the disposition for making those permanent loans of money by means of which the people of other countries are enabled to carry into effect operations tending to secure to themselves control of the world’s commerce. Under that system there is, and there can be, none of that stability in the price of money required for carrying out such operations.” Absorbed in his abstruse studies, he knows but little of what is really going on. His theory builds up his facts, and the work is so beautifully done by him, that the eye rests only on the superstructure.

Mr. Carey has a tender heart. It is deeply moved with sympathy for “the manufacturers and merchants who are more than fleeced by Shylocks, who would gladly take the pound of flesh nearest the heart.” One is melted to tears by his recital of their sufferings. How and when do these sad things occur, that only Mr. Carey hears of them? There always have been and always will be individual cases of misfortune worthy of men’s sympathy, but at no previous period have these classes of the community, enjoyed more general prosperity. Nor if one enters the sphere of manual labor exclusively, and takes into view that class which Mr. Carey has always had very near to his heart, can there be found any indications but those of unusual prosperity. There is abundance of employment and at full wages. How the repeal of the usury law can injuriously affect labor, I cannot imagine. It is practically null, and may be legally avoided. Those who

work with their hands, are most to be benefited by the rapid circulation of money, and every hindrance to that circulation, in whatever shape it may be, operates to their disadvantage.

Mr. Carey says: "the tendency of the precious metals is towards those countries where interest is low, and from those where interest is high." He might have said that accumulated capital draws to it its own earnings, and with the increase of its supply beyond the demand for it, the price of its hire declines. If low rates of interest indicate a growing power of labor over capital, as Mr. Carey says it does, then we find that growing power in England, where interest is low, and where Mr. Carey believes that capital lords it over labor more than in any other part of the world.

All the evils which theologians ascribe to the fall of man, Mr. Carey attributes to "the sad blunders of our great financiers." Already, he says, "sheriff's sales indicate widespread distress, and should this section be adopted, giving perfect freedom to the Shylocks of the day, the next half-dozen years will witness the transfer under the sheriff's hammer of the larger portion of the real property of both the City and the State. Of all the devices yet invented for the subjugation of labor by capital, there is none that can claim to be entitled to take precedence of that which has been now proposed for our consideration." With what prophetic sadness this is uttered! Its tone is as earnest as if it were that of inspiration. Coming from lips so matured by reflection and study, how can one disregard it? Practical experience will, however, override theoretical predictions, and scoff as one may be called, Mr. Carey is pointed to the States of New

Jersey, New York and Ohio, where no evidence of ruin is to be found, although seven per cent. and upwards are the legal rates of interest, and to all of them as well as to Pennsylvania, where the usages of borrowing and lending virtually abrogate the usury law. The widespread distress, which Mr. Carey speaks of, is purely ideal.

Mr Carey, says that in 1859, Mr. Edward Everett estimated the purely personal debt of the country apart from that of trade, manufactures, or agriculture, at fifteen hundred millions of dollars, and described it as a "mountain load, more deadly than fever and plague, more destructive than the frosts of Spring, or the blights of Summer," and yet Mr. Carey thinks "Mr. Everett failed to appreciate to even a tithe of its real extent the power thereby given to capital, in its contest with labor." What this purely personal debt was, neither Mr. Everett nor Mr. Carey explains. It was, however, a debt, whatever its character, with very disagreeable consequences. Mr. Carey then says:

"Every one who parts with property, payment for which is to be made at some future time, by so doing constitutes himself a money-lender to the extent of the amount whose payment is thus postponed. If the property be purely personal, he adds to what would otherwise be the price so much as will cover the charge for the time and for the risk to be incurred. The borrower being regarded as a thoroughly responsible man, the interest thus charged may not exceed ten or twelve per cent. per annum; but passing downward in the societary scale, the charge rises in the direct ratio of the poverty of the party borrowing, until at length we find the very poor and the very weak, paying interest at the rate of sixty, eighty, a hundred, and per-

haps even, as now in England, almost five hundred per cent."

This is Mr. Carey's explanation of the process by which a dealer becomes a money-lender. It is not difficult for him to draw any class into his service when he needs that service. From the largest dealer to him who scores his charge on the bar-room door, with the sum of all their sales with interest added, he has them at his command, and by a breath converts them into lenders of money. But does he not practise a species of inhumanity of which he should be ashamed in this transformation of the honest dealer into a money-lender—a Shylock? Having now shown who are the lenders of money, the next step is to create the borrowers and the amount borrowed. These obscure facts are reached by a summary process. Sixteen millions of people in the United States, Mr. Carey says, are capable of contracting debts. We find that number to be one-half of the then population, and that investigators have ascertained that one-half of the whole population ordinarily is under and one-half over twenty-one years of age. The latter constitute Mr. Carey's subjects; nineteen-twentieths of whom he *believes* were really in debt, that is 15,200,000 out of 16,000,000, and that they were paying interest on their debts at from 10 to 200 per cent., and the total debt he assumes as greatly exceeding two thousand millions.

Thus Mr. Carey, *on exclusively speculative data*, proves that at the outbreak of the war there was a personal debt, not so pure probably as that spoken of by Mr. Everett, for Mr. Everett does not speak of the excessive interest his debt was bearing, whilst Mr. Carey *assumes*

that his two thousand millions were bearing from 10 to 200 per cent. If one takes the average rate of interest, say at 100 per cent., the annual payment for interest alone is two thousand millions. The ability to pay so much annually proves that the debt was based on a large previously acquired property or the immense productiveness of labor in the use of the capital borrowed. Another observation may with propriety be made here, that this large mountain of debt produced neither fever, plague, frost, nor blight, as at that time there was no apparent distress, emigration was flowing into the country, the husbandman was well rewarded and industry found everywhere profitable employment. To illustrate his point, however, Mr. Carey converts this debt into notes of hand, and then represents it as "two thousand millions of uncurrent money, as perfectly dead so far as regarded all performance of exchanges, as if it had been buried in the earth." Why, was this conversion into notes of hand needed? Only to serve Mr. Carey's peculiar mode of argument, for as currency it was useless in its original form, and it was equally useless after its form was changed. In consequence of this buried currency, Mr. Carey says, "that in the first year of the war the societary movement was paralysed to a degree greatly exceeding anything the country had ever before known." When he has a theoretic point to make, Mr. Carey seems to regard the war as a mere circumstance, unequal to any serious consequences as a disturber. Who else could draw the conclusion he has here stated? That a war, which no one believed could occur because it was so unnatural, should have startled a nation; that when it did occur, and our fields full of promise for the har-

vest were trodden by hostile armies and soaked in fratricidal blood, and our homes were sending forth their fathers and sons in defense of their dearest rights; was it other than a natural consequence that all the ordinary pursuits ceased, and all the instruments of commerce and of every industry were paralysed? It was the war and not the burial of Mr. Carey's imaginary uncurrent currency which produced the paralysis. Such consequences had a real, not an imaginary, cause.

The paralysis was temporary. As soon as our condition was realized by the Government and the people, every instrumentality the nation possessed was put in action, as well as its army and its navy, and when the gold in its treasury was exhausted, its credit was used wisely and to great advantage in the \$400,000,000 spoken of by Mr Carey. He calls it "live money, free of interest, which took the place of thousands of millions of dead money, for whose use our people had been paying interest at twice, thrice and even twenty times the legal rates." How it takes the place of money which was buried and was purely ideal before it was buried, Mr. Carey does not trouble himself to explain. But Mr. Carey certainly cannot believe that the two thousand millions were wiped out by this process. He knows too well that unrelenting creditors, his Shylocks, cannot be paid by either logic or rhetoric. Industry must have toiled, death have aided, and the bankrupt law done its part in cancelling that "mountain load;" and further, he has told us so often in the course of his speech of existing distress, "caused by the sad blunder of our great financiers" and the "mountain loads of debt," that he will pardon me for saying to him that by a surer process than that by which he

established the existence of two thousand millions of debt then, he can make it fourfold that sum now. Without looking at debt in the gloomy light in which he has presented it, or speculating in the slightest degree upon its extent, one can sum up very readily, as existing at the present moment, forty-five hundred millions, excluding all kinds but the debt of the United States, State, City and Railroad loans. The individual and business debt of the country is almost beyond computation,—the debts due the Banks alone being about nine hundred millions. What the purely personal debt is, Mr. Carey may conjecture. But one should not delude one's self by a false estimate of what debt is. Debt is usually a representative of the realized or promised earnings of labor. In the shape of currency it is Mr. Carey's panacea for all diseases. To speak seriously, it is one of the most useful instruments of civilized man, and whilst this earth is the home of man its aid is not likely to be dispensed with. Like every other instrument in the hand of man it may be made destructive, but used as it should be, it is the promoter of industry and largely contributes to its rewards. Archbishop Whately with the power of his logic, proved conclusively that Napoleon never lived. Mr. Carey, in his logic, is less forcible but more ambitious.

Mr. Carey's sympathies are with the borrowers of money. He has none for the lenders, and why one class should be treated with injustice, at least in his description of them, is quite inexplicable. If the products of industry bring more money than they used to do by natural causes, why should not the same causes be allowed to operate on the product of money?

Did Mr. Carey move about in the world as the

money of which he writes does, and come in contact with the lenders and borrowers, he would find them made of one blood and possessed of like passions. The tendency to extortion is no more a peculiarity of the money-lender than it is of the vender of merchandise, the landlord, or any other class of men. It is a vice of humanity.

I will delay you no longer. I have followed Mr. Carey far enough to show what appear to me to be some of his inconsistencies on the subject of the usury law. I believe that his views in regard to it are entirely attributable to the application he makes of the influence of this law on his theory of paper money and the system of protection. I close with an expression of my own conviction, that the usury law is adverse to the best interests of the Commonwealth, and being so, that it operates unfavorably to the system of protection.



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